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“Protecting U.S. Intellectual Property Overseas:
The Joint Strategic Plan and Beyond”

House Committee on Foreign Affairs

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Chairman Berman, Ranking Member Ros-Lehtinen and members of the Committee, I appreciate the opportunity to appear before you to discuss the promotion and protection of American intellectual property overseas and the Obama Administration’s 2010 Joint Strategic Plan on Intellectual Property Enforcement.

(Please note that this statement reflects my own personal views and is not given on behalf of my firm or any of its clients.)

The Significance of Intellectual Property Enforcement

From May 2005 to March 2008 I had the privilege of serving as the U.S. Coordinator for International Intellectual Property Enforcement. Our mission was to coordinate and leverage the resources of the U.S. federal government to protect American IP at home and abroad.

That previous effort, as well as those currently being led by the Obama Administration, reflect the critical role that intellectual property plays in the competitiveness and growth of the U.S. economy.

Many of the statistics that back this up are well known, but deserve repeating:

- IP-intensive industries in the U.S. create an average \$14.6 billion in trade surplus each year.¹
- U.S. intellectual property is worth between \$5.0 trillion and \$5.5 trillion—more than the nominal gross domestic product of any other country.²
- In the states represented by the Members of this committee, the movie industry alone supports nearly 520,000 jobs and provides over \$33 billion in direct wages.³

These numbers give us a *snapshot* of what IP means to our economy today.

¹ http://www.theglobalipcenter.com/sites/default/files/reports/documents/NDP_IP_Jobs_Study_Hi_Res.pdf

² Robert J. Shapiro and Kevin A. Hassett, “The Economic Value Of Intellectual Property,” USA For Innovation, October 2005

³ <http://mpaa.org/policy/state-by-state>

Other facts also point to very important *trends*:

- The number of U.S. patents for clean and renewable energy sources has risen from 720 in 2002 to 1,125 in 2009.⁴
- Over the same period of time venture funding of these technologies in the U.S. has risen from \$900 million to \$5.8 billion last year, and 2009 was clearly a difficult time for new investments.⁵
- It is estimated that IP-intensive industries account for nearly half of all U.S. exports. This includes over \$125 billion in foreign sales for U.S. copyright industries and over \$28 billion in sales for the U.S. pharmaceutical sector.⁶

For policymakers seeking to support our most creative and cutting-edge industries, few things are as important as a strong commitment to the protection of their intellectual property.

Unfortunately, we are confronting an environment in which counterfeiting and piracy have become sophisticated, global enterprises that threaten entire industries, put U.S. consumers at risk and often provide a source of revenue for criminal organizations:

- In 2009, U.S. Customs officials made 14,841 seizures of counterfeit and pirated goods at our borders – this is up from a little over 8,000 seizures in 2005.
- According to a report by the Federal Trade Commission, counterfeiting is estimated to cost the U.S. auto parts industry \$3 billion in lost sales a year, potentially putting up to 250,000 manufacturing jobs at risk.
- Illegal file-sharing and other forms of online piracy are eroding investment, creativity and sales of local music in major markets. For example, not one new Spanish artist made the charts in that country last year⁷.
- Counterfeit drug sales could reach \$75 billion globally in 2010, an increase of more than 90% from 2005.⁸
- Senior U.S. Government law enforcement officials, as far back as Department of Homeland Security testimony before this committee in 2003, have consistently pointed to the connection between IP crimes and financing for criminal and terrorist organizations.⁹

⁴ Clean Energy Patent Growth Index: http://cepgi.typepad.com/heslin_rothenberg_farley/

⁵ Cleantech Group

⁶ *Copyright Industries in the U.S. Economy: The 2003-2007 Report*, by Stephen E. Siwek of Economists Incorporated, prepared for the International Intellectual Property Alliance (IIPA), June 2009, available at www.iipa.com.

⁷ International Federation of the Phonographic Industry, *Digital Music Piracy Report 2010*, January 2010.

⁸ "Counterfeiting Facts and Stats," Protection from Brand Infection, CMO Council. 28 April 2009.

⁹ "The Department of Homeland Security has not established a direct link between profits from the sale of counterfeit merchandise and specific terrorist attacks in the United States, but we do have credible and specific intelligence which indicate

The Importance of the Joint Strategic Plan on Intellectual Property Enforcement

The 2010 Joint Strategic Plan on Intellectual Property Enforcement recently released by the Obama Administration lays out a thoughtful and comprehensive approach to tackling some of the toughest IP policy and enforcement challenges that we face now and will confront in the future.

While a number of critical actions proposed within the Strategy focus on government process and expanded enforcement activities, it also addresses some significant policy matters that will improve the environment for American rights holders.

For instance, the Strategy recognizes the alarming proliferation of websites that traffic in huge volumes of pirated material, and the recent *Operation In Our Sites* led by ICE and DOJ provides a compelling example of how federal law enforcement and industry can collaborate to address this problem. Likewise, the Strategy recognizes that better cooperation among a range of industry players is necessary and, ultimately, legislation may be required to have a meaningful impact on online piracy.

The Strategy also stresses the significance of the Anti-Counterfeiting Trade Agreement. This is a major policy initiative that will substantially improve the global climate for IP protection.

The Administration's Strategy also promises to take the government's own coordination to a new level in terms of the agencies involved and their ability to tackle difficult challenges like counterfeit medicines and supply chain management.

Finally, the importance of sound and relevant data is of tremendous importance to policy makers and industry, and the Strategy articulates a range of new economic indicators the Administration will seek to quantify the true value of IP to our economy.

The Unique Challenge of China and Russia

The U.S. confronts a range of domestic and international IP issues at any given time, however, China and Russia present large and unique challenges.

The U.S. has made some progress with China through bilateral efforts such as the Strategic & Economic Dialogue and the Joint Committee on Commerce and Trade, attempting to enforce trade rules and attacking criminal organizations, but it is clear that we are probably treading water at best.

The recent WTO cases brought by the U.S. against China may improve some enforcement efforts and provide additional market access for U.S. films, but we are quickly reminded that nearly 4 out of 5 software applications running on Chinese computers – the biggest PC market in the world by the way – are pirated.

that intellectual property crimes and terrorist organizations are linked.” Testimony of Asa Hutchinson, Under Secretary for Border and Transportation Security, House Committee on International Relations Hearing: Are Proceeds from Counterfeited Goods Funding Terrorism, July 16, 2003.

The music industry, unfortunately, is facing even longer odds, with nearly 99% of the marketplace for foreign music in China being unauthorized. There is little room for optimism either, as recent court rulings in China have sided with Chinese national champion Baidu despite the fact that its massive indexes of music carry no legitimate licenses from copyright owners.

And, as has been the case for many years, over 80% of the counterfeit goods seized at U.S. borders come from China. We are also seeing more sophisticated and potentially dangerous fake goods leaving China including counterfeit computer routers, medical devices, auto and aircraft parts, and pharmaceuticals. Professional counterfeiters in China are moving up the value chain and into high-margin, high-demand products such as these.

Late last year China significantly upped the stakes even further for U.S. industries from information technology to clean tech with the introduction of its “indigenous innovation” strategy. These policies would exclude U.S. companies from large parts of the Chinese market and compel transfers of intellectual property as the price of entry when they are let in. As Robert Holleyman, CEO of the Business Software Alliance put it recently in the Washington Post, “This squeezes us at both ends -- shutting many of our innovative products out of the market and stealing the rest.”

As has been the case for several years, Russia’s desire to join the WTO has become a focal point for U.S. efforts to improve IP enforcement there. Presidents Obama and Medvedev announced at their summit last month that they hope to conclude Russia’s long outstanding WTO commitments by September 30th of this year. In terms of IP enforcement, this would mean Russia must make a range of criminal, civil and customs enforcement improvements they committed to as part of the U.S.-Russia Bilateral Agreement in 2006. Specifically, the Intellectual Property Side Letter, which was part of that Agreement, articulated a number of steps that the Government of Russia would take to address flaws in its IP enforcement rules and process. It also committed to be fully compliant with the WTO Trade Related Aspects of Intellectual Property Agreement (TRIPs) upon accession to the WTO.

Given the scope of these commitments and the work that remains left to do, completing this effort by September 30th seems to be a heavy lift. For its part, the Obama Administration has maintained the position of the Bush Administration that the U.S. supports Russia’s accession to the WTO, however this support is contingent upon Russia’s fulfillment of the commitments it made to address outstanding legislative gaps and enforcement standards as set forth in the 2006 IP Side Letter. USTR and other members of the U.S. delegation to the U.S.-Russia IP Working Group have recently reported that their Russian counterparts have intensified efforts to reach agreement on outstanding IP issues.

Russia may indeed now have more incentives to complete the WTO process. The top Russian political leadership is supporting the growth of an innovative economy and technology development, with the goal of expanding its economy to reduce its reliance on natural resources exports. WTO membership would increase foreign investor confidence in Russia, which will be needed to realize the government’s economic policy objectives. Having a strong IP legal regime and effective enforcement practices will be vital to attracting foreign investors and technology.

As we consider the Administration's Joint Strategic Plan on Intellectual Property Enforcement and assess our relationships with key trading partners such as China and Russia, it is very clear that our ability to promote and protect American intellectual property is a critical component of our overall foreign policy. Important goals such as addressing our competitive issues with countries like China, reducing our dependence on foreign energy sources, promoting exports and incentivizing foreign investment in the U.S., all depend upon our intellectual capital. It is one of our most valuable resources and competitive advantages.

I thank you again for the opportunity to appear before the Committee and discuss these important issues.